



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, CNR, FF, MND, MNSD, MNDC, O, OPB, OPR, OPC

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

Tenants application

This is an application to have two Notice to End Tenancy cancelled one that was given for cause and the other for non-payment of utilities. The tenant is also requesting that the landlord bear the \$50.00 cost of the filing fee to he paid for his application for dispute resolution.

Landlords application

This is a request for an Order of Possession based on the Notices to End Tenancy, and a request for a monetary order for \$5,577.62, for outstanding utilities and for damages. The landlord is also requesting an order that the tenant bear the \$100.00 cost of the filing fee he paid for his application for dispute resolution.



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First of all it is my decision that I will not deal with all the issues that the landlord has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issues to be dealt with together.

I therefore will deal with the request for an Order of Possession, and a request for the outstanding utilities for which the Notice to End Tenancy has been given and I dismiss the damage claims with liberty to re-apply.

Decision and reasons

The tenant was served with three notices to end tenancy, one for non-payment of December 2009 rent, one for non-payment of outstanding utilities, and one notice given for cause. I will deal with each notice one at a time starting with the Notice to End Tenancy for non-payment of December 2009 rent.

The tenant admitted that he received the Notice to End Tenancy for non-payment of December 2009 rent on December 2, 2009. The tenant also admitted that he mailed the rent to the landlord by registered mail on December 5, 2009.

The landlord admitted that he received the rent from the tenant by registered mail on December 8, 2009.

Section 46 of the Residential Tenancy Act states:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

It is my decision that the tenant did not take reasonable steps to ensure that the rent was paid within five days of receiving the Notice to End Tenancy, and in fact in this case the landlord did not receive the rent until six days after the Notice to End Tenancy was received by the tenant. Further the tenant did not file a dispute of the Notice to End Tenancy for non-payment of rent.

Therefore it is my decision that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and I will be issuing an Order of Possession in favour of the landlord.

Having found this tenancy ends pursuant to the Notice to End Tenancy for non-payment of rent, I need not deal with the other two reasons given for ending the tenancy.

I will however deal with the landlords claim for outstanding utilities.

Utilities

The landlord testified that:

- In March of 2004 the parties signed a new tenancy agreement in which the tenants agreed to pay for all utilities including garbage removal, however to date they have failed to do so.
- As of December 9, 2009 their overdue utilities total \$2927.10.

The landlord is therefore requesting an order for the tenant to pay those outstanding utilities.

The tenant testified that:

- He never agreed to pay for utilities, only for a rent increase and therefore does not believe that he should be paying any of these utilities.
- He also does not believe that these are utility bills, and that they are tax bills and should be paid by the landlord.

It is my finding that the landlord has shown that the tenant agreed to pay for utilities including garbage, as the landlord has produced a tenancy agreement that has been



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signed by the tenant. I therefore do not accept the tenants claim that he never agreed to pay these utilities.

It is also my finding that the bills submitted by the landlord are in fact for the utilities and are not taxes, although they are added to the landlord's taxes if they are not paid.

I therefore allow the landlords full claim for outstanding utilities totaling \$2927.10.

Conclusion

I have issued an Order of Possession to the landlord effective five days after service on the tenants.

I have also issued an order for the tenant to \$2927.10, plus \$50.00 of the filing fee paid by the landlord, for a total of \$2977.10. I therefore order that the landlord(s) may retain the full security deposit plus interest:

\$663.19

I further Order that the Respondent(s) pay to the applicants the following amount:

\$2313.91

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 08, 2010.

Dispute Resolution Officer